

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-11-30,087

In re: 1509 T Street, S.E., Unit # 3

Ward Eight (8)

JOYCE ANN WILSON

Tenant/Appellant

v.

KMG MANAGEMENT, LLC

Housing Provider/Appellee

ORDER DISMISSING APPEAL

May 24, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a Final Order issued by the Office of Administrative Hearings (OAH),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 – 510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008).

I. PROCEDURAL HISTORY

On June 27, 2011, Tenant/Appellant Joyce Ann Wilson (Tenant), a resident of 1509 T Street, S.E., Unit # 3 (Housing Accommodation) filed Tenant Petition RH-TP-11-30,087 (Tenant Petition) with RAD, claiming that Housing Provider/Appellee KMG Management, LLC (Housing Provider) violated the Act as follows:²

1. There was no proper 30-day notice of rent increase before the increase was charged;
2. The landlord (housing provider) did not file the correct rent increase forms with the RAD;
3. The rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations;
4. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced;
5. A Notice to Vacate has been served on me/us, which violates Section 501 of the Act.

Tenant Petition at 1-2; Record (R.) at 19-20.

Thereafter a Case Management Order (CMO) was issued setting a hearing for October 7, 2011. Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (OAH Sept. 9, 2011) at 1; R. at 35. The hearing was rescheduled twice: once for November 16, 2011, and again for December 1, 2011. *See* Wilson, RH-TP-11-30,087 (OAH Apr. 6, 2012) (Final Order) at 2; R. at 41, 57, 122. The Tenant filed a Motion to Amend the Tenant Petition on October 7, 2011, R. at 44; Administrative Law Judge Erika Pierson (ALJ) entered an Order on October 26, 2011, granting the Tenant's Motion to Amend the Tenant Petition. Wilson, RH-TP-11-30,087 (OAH Oct. 26, 2011) at 1-2; R. at 46-47. An evidentiary hearing was held in this matter on December 1, 2011. R. at 69. The ALJ issued her Final Order on April 6, 2012. *See* Final Order at 1-24; R. at 70-93. In the Final

² The alleged violations of the Act are recited herein using the language from the Tenant Petition.

Order, the ALJ ordered that a July 18, 2011 notice to vacate was invalid, and dismissed all of the Tenant's other claims. *See* Final Order at 21; R. at 73.

On April 20, 2012, the Tenant filed a Notice of Appeal ("Notice of Appeal") with the Commission in which she asserted the following:³

1. The Rent Administrator erred in denying Tenant's claim that Housing Provider failed to file the proper rent increase forms with the Rental Accommodation Division of the Department of Housing and Community Development when the preponderance of the evidence on the record does not support this finding.
2. The Rent Administrator erred in determining the rental unit was in substantial compliance with the Housing Regulations where there the [sic] evidence shows a clearly outstanding violation.
3. The Rent Administrator erred in determining the services and facilities were not substantially reduced when the evidence supports the reduction in both services and facilities.
4. The Rent Administrator erred in finding that Housing [P]rovider has overcome the burden of presumption that it retaliated against Tenant when Housing Provider has given conflicting reasons for attempting to evict Tenant.

Notice of Appeal at 1-2. The Housing Provider did not submit a response to the Notice of Appeal.

On April 26, 2013, the Commission issued a Notice of Scheduled Hearing (Hearing Notice) advising the parties of the hearing date, May 23, 2013. The record reflects that the Hearing Notice was mailed, postage prepaid, by first class U.S. mail, to the Tenant and the Housing Provider, respectively, on April 26, 2013 at the addresses contained in the Notice of Appeal.

In the Hearing Notice, the Commission informed the parties that:

The failure of either party to appear at the scheduled time [would] not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of

³ The issues on appeal are recited herein using the language from the Tenant's Notice of Appeal.

the appeal. Failure of an appellant to appear may result in the dismissal of the party's appeal.

Hearing Notice at 1 (emphasis added). Neither the Tenant nor the Housing Provider contacted the Commission regarding any matter or issue related to the Hearing Notice or the instant appeal after the Hearing Notice was mailed on April 26, 2013. Neither party filed for a continuance. *See* 14 DCMR §§ 3815.1,-.3 (2004)

Neither party was present at the Commission hearing on May 23, 2012. Consequently, after waiting thirty (30) minutes past the scheduled hearing time of 2:00 P.M., the Commission, on its own motion, moved to dismiss the appeal due to the Tenant's failure to appear.

II. LEGAL ANALYSIS AND ORDER

Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), “[i]n contested cases, the proponent of a rule or order shall have the burden of proof.” Here, the Tenant was the proponent of the Notice of Appeal and therefore had the burden to prosecute the appeal in the Commission. *See, e.g., Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316 (RHC Feb. 24, 2012). There is no evidence in the record that the Tenant did not receive actual notice of the Commission's hearing. *See* R. at 1-123. As noted *supra*, the Tenant did not contact the Commission with a reason for her failure to appear, nor did she (or the Housing Provider) request a continuance of the hearing date. *See* 14 DCMR §§ 3815.1,-.3. As noted *supra*, the Commission's Hearing Notice warns parties that their failure to appear may result in the dismissal of the appeal. *See* Hearing Notice at 1.

In *Stancil v. Davis*, TP 24,709 (RHC Oct. 30, 2000), *aff'd sub nom, Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622 (D.C. 2002), the Commission dismissed an appeal when neither the housing provider/appellant nor his attorney appeared at the scheduled hearing. *Accord Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316 (dismissing appeal of tenant/appellant

when tenant failed to appear at scheduled Commission hearing without prior notice to the Commission of absence or request for continuance.) Affirming the Commission's dismissal of the housing provider's appeal, the District of Columbia Court of Appeals (DCCA) held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing, especially without providing any prior notice of any type to the Commission. *See Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d at 624-626.

In *Stancil*, the DCCA recognized that, although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, 14 DCMR 3828, 45 DCR 684, 687 (Feb. 6, 1998)⁴ empowers the Commission to rely on the DCCA's rules when its rules are silent on a matter before the Commission. *See* 806 A.2d at 624-625. According to 14 DMCR § 3828.1:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

In *Stancil*, 806 A.2d at 625, the DCCA noted that DCCA Rule 14 [D.C. App. R. 14] permits dismissal of an appeal “for failure to comply with these rules or for any other lawful reason,” and that DCCA Rule 13 [D.C. App. R. 13] “authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court's procedural rules.” *Stancil*, 806 A.2d at 625. *See also Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316.⁵ The DCCA concluded that “both [DCCA] Rule 13 and Rule 14 support the

⁴ The current text of this regulation in the most recent codification of the District of Columbia Municipal Regulations – namely, 14 DCMR § 3828.1 (2004) - is identical to that in the same regulation cited in *Stancil*, 14 DCMR 3828.1, 45 DCR 684, 687 (Feb. 6, 1998). *See* 806 A.2d at 624-625.

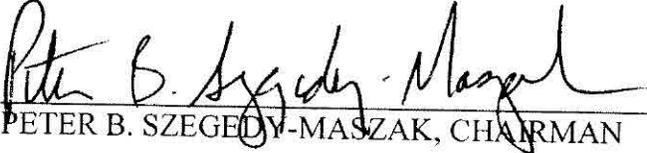
⁵ The DCCA rules applicable in *Stancil*, have been revised. *See, e.g.*, D.C. App. R. 13, 14 (revised effective January 2, 2004). The current DCCA rule applicable to a dismissal as in this case is D.C. App. R. 13(a), which states as follows:

proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal.” Stancil, 806 A.2d at 625. *See also Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316. Regarding the Commission, the DCCA determined that it was unable to “find fault with the RHC's [Commission's] consideration of our [DCCA's] rules in applying section 3828.1 of its own regulations.” Stancil, 806 A.2d at 625. *See also Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316. Consequently, pursuant to Stancil, 806 A.2d at 625-626, the Commission has broad discretion to dismiss an appeal when the appellant fails to attend a scheduled hearing. *See also Barnes-Mosaid v. Zalco Realty*, RH-TP-08-29,316.

III. CONCLUSION

For the reasons stated herein, the Commission dismisses this appeal by the Tenant *with prejudice* because the Tenant failed to appear at the scheduled Commission hearing in order to prosecute her appeal.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission’s rule, 14 DCMR § 3823.1 (2004), provides, “[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision.”

(a) Involuntary Dismissal. The court, *sua sponte* or upon motion of the appellee, with or without notice, may dismiss an appeal for failure to comply with a rule of this court or where otherwise warranted.

JUDICIAL REVIEW

Pursuant to DC OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission. . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

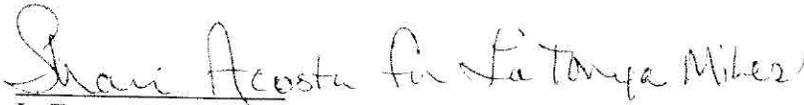
D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL** in RH-TP-11-30,087 was mailed, postage prepaid, by first class U.S. mail on this **24th day of May, 2013** to:

Sherlock Grigsby
601 Pennsylvania Avenue, N.W.
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Rabihah Scott
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LaTonya Miles
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